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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ZELENY,

Plaintiff,

VS.

EDMUND G. BROWN, Jr., *et al.*,

Defendants.

Case No. CV 17-7357 JCS

Assigned to:
The Honorable Richard G. Seeborg

**DECLARATION OF LARRY BERLINER
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO MOTION OF NEW
ENTERPRISE ASSOCIATES TO QUASH
SUBPOENA**

Date: March 7, 2019
Time: 1:30 p.m.
Courtroom: 3 (17th Floor)

[Filed Concurrently:
1. Opposition
2. Declaration of Michael Zeleny;
3. Declaration of David Affeld]

Action Filed: December 28, 2017
Trial Date: November 18, 2019

1 I, Larry Berliner, declare

2 1. I am over the age of 18 and am not a party to this action. I have personal
3 knowledge of the facts below. If called upon to do so, I could testify competently to those
4 facts.

5 2. I have more than 30 years in the computer and internet technology industry. I
6 have been working full time in the field since 1986 when I received my first job as a systems
7 administrator.

8 3. I am the principal of Berliner Consulting, which is a full-service information
9 technology consulting firm. Our work focuses on forensics, network implementation, data
10 recovery and examination, and electronic discovery, among other things. I presently manage
11 the information systems of more than 50 businesses. A substantial portion of our work is on
12 behalf of law firms engaged in data extraction, processing, and e-discovery.

13 4. I am readily familiar with industry standards regarding e-discovery, including
14 document collection, processing, review, and production, as well as e-discovery software and
15 systems. I am familiar with industry standards by virtue of my regular work for major law
16 firms on e-discovery projects.

17 5. I have performed hundreds of e-discovery assessments and projects involving
18 document collection, processing, and production. We have worked for both plaintiffs and
19 defendants, on behalf of parties seeking to compel electronic documents and those seeking to
20 avoid electronic production where it would be unreasonably burdensome.

21 6. I have reviewed the Declaration of Adam Valachovic in Support of Motion to
22 Quash in this case.

23 7. The document collection and processing method described by Mr. Valachovic
24 is not consistent with industry standards.

25 8. It contemplates collecting and processing all of the known email for all
26 employees of NEA. This would result in a significant unnecessary effort and considerable
27 overbilling. As a result, the estimates provided are not, in my opinion, reasonable.

28 9. In none of my e-discovery projects, even for small productions such as the one

1 at issue here, would I recommend collecting and processing all emails within an organization.
2 This is not consistent with industry standards.

3 10. Instead, industry practice is to limit the data before it is collected and
4 processed. This usually involves discussions among counsel to limit the custodians¹ whose
5 data is searched, and to identify relevant search terms before collecting data.

6 11. Mr. Valachovic's declaration does not reflect any effort to reduce the data in
7 any way before collecting and processing it, either by custodians or using search terms.

8 12. Both of these functions are readily available on the Office365 email platform.

9 13. Even without limiting the data set as discussed above, Office365 maintains a
10 word index of all emails. This makes even company-wide searches of emails easy and fast.

11 14. For example, given the data identified by Mr. Valachovic, a search for the
12 keyword "Zeleny" across the entire data set, and a download of all resulting email, would
13 likely take less than an hour.

14 15. The search terms that I would have recommended using in this case would not
15 include any words in the most common 500 words in the English language. As a result,
16 search terms should have resulted in an appreciable reduction in the total collection.

17 16. Mr. Valachovic also does not mention identifying custodians before collecting
18 and processing data. As a result, he assumes a need to collect and process all emails from any
19 user. This is not consistent with industry standards.

20 17. Limiting the data collection to those custodians reasonably likely to have
21 relevant data is an almost universal practice in e-discovery and has been for years. It
22 significantly reduces the amount of data to be collected and processed.

23 18. The website of NEA lists 36 team members. Assuming some rate of employee
24 turnover, and the use of assistants and other administrative staff, there are likely to be at least
25 50 custodians, and likely many more. I understand based on discussions with counsel for
26 plaintiff that only approximately five custodians are likely to have relevant data.

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28 ¹ Custodians are those individuals in a company who are reasonably likely to have relevant information.

1 19. Assuming that each custodian has roughly the same amount of data, limiting
 2 the collection to relevant custodians would decrease the data collected by at least 90%

3 20. Using the data estimates provided by Mr. Valachovic, performing the above
 4 steps would reduce the total data processed to less than 10 gigabytes, as follows:

5 Total Data on System: 4,880 gigabytes (4.88 terabytes)

6 After Identifying Custodians: 488 gigabytes (90% reduction)

7 After Running Search Terms: 9.76 gigabytes (98% reduction)

8 I have used a 98% reduction as a conservative estimate. In my experience, properly designed
 9 search terms typically reduce the collected data by far more than this amount.

10 21. Collection of 9.76 gigabytes would require significantly less processing effort
 11 than is suggested by Mr. Valachovic. This is a fraction of the data on a single iPhone.

12 22. Assuming Mr. Valachovic's rates, it should cost approximately \$1,220 to
 13 process the resulting data and upload it to a Relativity platform, as follows:

14 Processing cost at \$5.00/gigabyte: \$48.80

15 Uploading cost² at \$120.00/gigabyte: \$1171.20

16 Total: \$1,220.00

17 23. I do not understand the basis for Mr. Valachovic's assumption that the project
 18 would require 30 hours of project management. Given the size of the project, this estimate
 19 appears to be overstated by many times.

20 24. That said, because the project is small, many discovery vendors would charge a
 21 fixed fee of \$2,000 to \$10,000 to attend a Meet and Confer, collect and process the data.

22 *(Continued on next page)*

28 ² Assuming no further reduction by using more narrow search terms after processing

1 25. In my experience, law firms that are mid-sized or larger typically have internal
2 e-discovery systems that allow document processing, bates marking, and production to occur
3 at far less cost than using an outside vendor. A discovery project of this size, which is quite
4 small by e-discovery standards, could readily be handled internally at a nominal cost.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed February 8, 2019 at Los Angeles, California.

s/ Larry Berliner
Larry Berliner

1 **PROOF OF SERVICE**

2 I hereby certify that on February 8, 2019, I electronically filed the foregoing document
3 using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will
send a notice of electronic filing to the interested parties.

4 s/ Damion Robinson
5 Damion Robinson

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